



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF S-H-K-

DATE: NOV. 1, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a research engineer specializing in smart factories, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and argues that he is eligible for a national interest waiver due to his smart factory development expertise and experience. In July 2017, we issued a request for evidence (RFE) asking the Petitioner to provide evidence satisfying the three-part framework set forth in *Dhanasar*. In response, he provides further evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

---

<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

### A. Advanced Degree

The Petitioner previously provided certificates from [REDACTED] University stating that he received a Master of Science (1999) and a Ph.D. (2004) in industrial engineering. In response to our RFE, he offers an academic credentials evaluation indicating that his degrees are the equivalent of a Master of Science degree and a Doctor of Philosophy degree in industrial engineering from an accredited U.S. college or university. *See* 8 C.F.R. § 204.5(k)(3)(i)(A). Accordingly, the Petitioner qualifies as a member of the professions holding an advanced degree.

### B. National Interest Waiver

The next issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. The Petitioner indicates that he is an industrial engineer specializing in the research and development of smart factories. At the time of filing, he was serving as a principal consultant for [REDACTED] in Korea.

The Petitioner contends that his research concerning smart factory technologies “will help manufacturing facilities in the United States move from traditional models into Smart Factory setups, which will lead to increased production, safer working environments for factory employees, and a reduction of waste.” In Part 6 of the Form I-140, under “Basic Information about the Proposed Employment,” the Petitioner listed a job title of “Industrial Engineer” and described this job as “[a] branch of engineering which deals with the optimization of complex processes or systems.” In our RFE, we requested further information and evidence regarding his plans for future work in the United States. We noted that, as the Petitioner is applying for a waiver of the job offer requirement, he need not have a job offer from a specific employer. Nevertheless, information about the nature of his proposed endeavor is necessary for us to determine whether it has substantial merit and national importance, and whether he is well positioned to advance such an endeavor.

---

<sup>2</sup> *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

In response to our RFE, the Petitioner maintains that he is a “Research Engineer specializing in the research and development of Smart Factories.” He asserts that he “will be able to secure employment in the United States” and that “[t]here are many companies in the United States who are investing in Smart Factories.” The Petitioner further contends that [REDACTED] and [REDACTED] are examples of “companies in the United States who have pledged money in the research and development of Smart Factories” and that “they will need Research Engineers like me.” He does not, however, identify the capacity in which he will work, either as a consultant or a direct employee; the nature and level of the position he might seek, if applicable; or the specific focus of the projects he intends to undertake. Nor does the record include documentation indicating that the aforementioned companies have expressed interest in employing the Petitioner or utilizing his consulting services.

Additionally, the Petitioner provides a slide presentation that he characterizes as his “Future Plan” for work in the United States. This plan, however, does not specify the research and development projects he will undertake or otherwise sufficiently clarify his proposed endeavor in this country. While the plan offers general information about the processes involved in building a smart factory including strategy, operations, and methods, it does not identify U.S. projects, employers, or clients the Petitioner will serve as a research engineer or consultant. Page 20 of the plan contains a slide that states ‘[REDACTED]’ but no further details are included and the Petitioner has not otherwise indicated or documented that he intends to work for [REDACTED] in the United States. Furthermore, although Page 18 references an investment of \$46,814,159, the Petitioner does not indicate the source of the investment or demonstrate its availability for funding his research. Lastly, page 29 includes a graphic stating that the Petitioner intends to seek a job at a “consulting firm in USA (California or Texas)” in 2018 and to continue “consulting and project job in USA” in 2019, without further explanation.

Despite our request for clarification, the Petitioner has not provided sufficient information and evidence regarding his specific proposed activities in the United States. In *Dhanasar*, we held that a petitioner must identify “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. The record does not clearly explain the Petitioner’s proposed endeavor such that we are able to determine, without additional information and evidence, that his work will have both substantial merit and national importance and that he is well positioned to advance his proposed endeavor. Furthermore, the Petitioner has not established that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

### III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established eligibility for or otherwise merits a national interest waiver as a matter of discretion.

*Matter of S-H-K-*

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-H-K-*, ID# 551127 (AAO Nov. 1, 2017)